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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re M.S. et al., Persons Coming Under the
Juvenile Court Law.

SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

MELISSA W.,

Defendant and Appellant.

A128874

(Solano County
Super. Ct. Nos. J39315/J39316)

Appellant Melissa W. (mother) challenges the juvenile court's order terminating reunification services following a 12-month review hearing after she relapsed into substance abuse while working toward reunifying with her two sons. Finding no abuse of discretion in the court's decision to terminate services, we affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

On April 1, 2009, respondent Solano County Health and Human Services Department (Department) filed juvenile dependency petitions pursuant to Welfare and

Institutions Code section 300, subdivisions (a)¹ (serious physical harm) and (b) (failure to protect) as to mother's 10-year-old son M.S. (Case No. J39315) and seven-year-old son K.S. (Case No. J39316). The petitions alleged that the minors' father, Jacob S. (father),² with whom the boys lived, had inflicted excessive physical discipline on the minors, and that mother's substance abuse had interfered with her ability to adequately care for the minors.

At the time the dependency petitions were filed, mother lived in Nevada. The minors had not resided with mother since 2006, and they had not seen mother since the previous summer. Mother admitted to a social worker that she had used methamphetamine on and off for the previous 13 years, that she had used the drug within the previous month, and that she had never completed an inpatient treatment program. Mother had a history with child and family services in Nevada regarding the minors' two younger siblings, both of whom tested positive for methamphetamine when they were born, and one of whom died of SIDS in 2007. The minors in this case were ordered detained.

The juvenile court sustained the dependency petitions as to one of the section 300, subdivision (b) allegations on May 4, 2009, and permitted an extended visit with the minors' maternal grandmother in Nevada, which began on May 12. Mother also lived with the maternal grandparents. The Department began assessing the grandparents' home for placement pursuant to the Interstate Compact on the Placement of Children (Fam. Code, § 7900 et seq.) (ICPC), and submitted an ICPC request to Nevada social services. Mother entered a residential treatment program, which she successfully completed in June 2009.

Following a continued dispositional hearing on June 10, 2009, the juvenile court ordered reunification services for mother and father. The court also authorized out-of-state placement with the grandparents upon receipt of ICPC approval, and the court

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

² Father is not a party to this appeal.

further ordered that the social worker would have discretion to place the minors in mother's custody, with the approval of the ICPC social worker and after 10 days' written notice to all counsel. The ICPC request was later approved, and the juvenile court ordered placement of the minors with mother with family maintenance services following a six-month review hearing on November 19, 2009. Mother and the minors continued to live with the maternal grandparents, and mother had reportedly "taken on the role as primary caregiver of" the minors.

The Department filed supplemental dependency petitions (§ 387) as to both minors on January 26, 2010. The petitions alleged that mother had left the residence where she had custody of the minors for two days, that mother had admitted to recently using methamphetamine, that she had allowed the minors to be "threatened and physically punished" by their uncle, and that mother had coerced minor M.S. to provide urine samples for her drug tests. The petitions further alleged that M.S. had reported that his uncle hit him daily, and minor K.S. reported that the uncle hit M.S. with coat hangers and a wooden spoon.

The Department also filed a declaration in support of the supplemental petitions reporting that M.S. stated that mother was selling methamphetamine, and that his uncle had shoved him against a wall by his throat, with his feet off the ground. The maternal grandmother reported that mother was spending time at the home of Steven F., the father of the minors' younger sibling, and that she (the grandmother) believed that Steven was actively using drugs with mother at his home. Mother reportedly acknowledged relapsing "only . . . once," and said that she had not participated in any outpatient substance abuse treatment services as outlined in her child welfare case plan because she did "not have the time due to her work schedule." The minors were again ordered detained, and continued to live with the maternal grandparents in Nevada.

The juvenile court sustained the supplemental petitions on March 9, 2010, after the petitions were amended to allege that mother had admitted to recent methamphetamine use, and that she had at times exercised poor judgment regarding the care and custody of

the minors by requesting M.S. to provide urine for her drug tests, and by at times leaving the minors in the care of their uncle.

In a combined section 387 disposition/12-month review status review report filed on April 1, 2010, the Department recommended that the juvenile court terminate reunification services as to mother. At that time, mother's whereabouts were unknown, and she had not made contact with the Department since January 23. The social worker reported that the primary issue of concern was mother's continued substance abuse and "lack of basic parenting skills" despite the completion of a residential treatment program and an eight-week parenting class. The Department also was concerned about mother's "significant Child Welfare history in Nevada." The social worker further reported that although M.S. was involved in play therapy sessions and mother had been encouraged to participate, mother had attended no more than two sessions over a period of three months, and did not appear interested in participating. Based on a "risk reassessment" of mother, the social worker stated that the "risk of future maltreatment [of the minors] was very high." Mother had not complied with continued treatment as required by her case plan, she had relapsed into substance abuse, she had demonstrated "very minimal interest in rehabilitation," and she had not made contact with the Department to ask about services and visitation, according to the social worker. Both minors reportedly told an ICPC social worker that they loved mother, but that they thought it was better if mother did not live in the same house with them. The social worker opined that providing reunification services to mother would not benefit the minors, because they needed "consistency in care from an available caregiver," and it did not appear that mother was "able or willing to provide adequate care, protection, and supervision to her children at this time." There was therefore no substantial probability that the minors would be returned to mother's custody within the next six months.

By contrast, father, who lived in Vacaville, was reportedly cooperative with the Department and was actively participating in reunification services. The Department recommended that father continue to receive services.

At a combined dispositional hearing on the supplemental petitions and 12-month review hearing on April 26, 2010, the social worker gave testimony consistent with her report. Although mother was present at the hearing, the social worker testified that she had been unable to contact mother in advance of the hearing. Mother's attorney made an offer of proof that mother had been sober for 30 days and was attending weekly Narcotics Anonymous meetings. Mother's counsel and the minors' counsel requested that reunification services be continued for mother.

The juvenile court terminated reunification services as to mother, but not as to father. The court found that mother's progress on her case plan was "[m]inimal." The court stated that mother could later seek reinstatement of services pursuant to section 388 (petition for change in court order), but that mother was "going to have to do something to show people that she is capable of initiating that kind of effort [to address her substance abuse] on her own." The court ordered continued placement in the care of the maternal grandparents. Mother timely appealed.

II. DISCUSSION

Mother argues that the juvenile court erred when it terminated her reunification services. She claims that terminating services as to her "punished" both her and the minors for her relapse, that further services would be in the minors' best interests because services would ensure that mother was drug-free during visits and that she was maintaining a healthy lifestyle, and that, "[a]t the very least," she should receive services while father continues to receive them. We review a juvenile court's decision on whether to order additional reunification services for abuse of discretion (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 528) and find no such abuse of discretion.

"At the 12-month review hearing, section 366.21, subdivision (g)(1) allows the court to continue reunification services for up to six months" (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 564.) The court shall continue the case "only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . and safely maintained in the home within the extended period of

time” (§ 366.21, subd. (g)(1); see also *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 180.) Services are available after the 12-month hearing “only if the juvenile court finds specifically that the parent has ‘consistently and regularly contacted and visited with the child,’ made ‘significant progress’ on the problems that led to removal, and ‘demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.’ (§ 366.21, subd. (g)(1)(A)-(C).)” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845.) Here, the juvenile court found that mother had made only “[m]inimal” progress on her case plan and that she had not made sufficient efforts to stay drug-free. Because these factual determinations are supported by substantial evidence (*V.C. v. Superior Court, supra*, 188 Cal.App.4th at p. 529), the record lacks statutory support for continuing services for mother. (*Tonya M.* at p. 845.)

The juvenile court was authorized to terminate mother’s reunification services even though it continued services for father. (*In re Alanna A., supra*, 135 Cal.App.4th at pp. 558-559.) “The Legislature has recognized that in some circumstances, it may be fruitless to provide reunification services. [Citations.] In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citations.]” (*Id.* at p. 566.) Although mother initially made progress in her efforts to reunify with the minors and was at one point granted custody of them, she later relapsed and used drugs—a problem she had struggled with for more than a decade—and failed to make contact with the Department for months. She also did not show interest in services offered to her, such as play therapy with M.S. In light of these factors, “the court reasonably concluded that [mother’s] performance did not merit continued reunification services.” (*Id.* at p. 565.)

As the juvenile court observed, if mother’s circumstances change and she claims that providing additional services would be in the best interests of the minors (§ 388), mother may petition the court for additional reunification services. (*In re Alanna A., supra*, 135 Cal.App.4th at p. 565, fn. 10.)

III.
DISPOSITION

The juvenile court's order is affirmed.

Sepulveda, J.

We concur:

Reardon, Acting P.J.

Rivera, J.